

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF NEW MEXICO

In re:

FRED DALE VAN WINKLE, and,

Debtor.

Case No. 13-11743-t7

BRIAN VAN WINKLE, not in his personal
capacity but solely as co-personal representative
of the estate of Fred Van Winkle, and
TAMMY SPRAGUE, not in her personal
capacity but solely as co-personal representative
of the estate of Fred Van Winkle,
Plaintiffs,

v.

Adv. No. 20-01022-t

BELLEVUE VALLEY LAND CO., a New
Mexico corporation, JOHN H. WILLIAMS,
and ELLEN B. WILLIAMS,
Defendants.

**MOTION 1) TO EXTEND DEADLINES: A) TO COMPLETE DISCOVERY; B) TO
RESPOND TO DEFENDANTS' DISCOVERY REQUESTS DATED JUNE 8, 2020; AND
C) TO RESPOND TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT FILED
OCTOBER 30, 2020; AND 2) TO ADJOURN FINAL PRETRIAL CONFERENCE**

COMES NOW BRIAN VAN WINKLE (“**Van Winkle**”), not in his personal capacity but
solely as co-personal representative of the estate of Fred Van Winkle (“**Debtor**”) and TAMMY
SPRAGUE (“**Sprague**”) and, collectively with Van Winkle, the “**Movants**”), not in her personal
capacity but solely as co-personal representative of the estate of the Debtor, by and through their
undersigned counsel GAFFNEY LAW, PC (Joel Alan Gaffney, Esq.), for their Motion 1) to
Extend Deadlines: A) to Complete Discovery in this case; B) to Respond to Defendants’
Discovery Requests Dated June 8, 2020; and C) to Respond to Defendants’ Motion for Summary
Judgment Filed October 30, 2020; and 2) to Adjourn Final Pretrial Conference (the “**Motion**”).
In support of the Motion, Movants hereby state as follows:

JURISDICTION AND VENUE

1. On May 21, 2013, Debtor commenced the above-captioned bankruptcy case (“**Bankruptcy Case**”) by filing a voluntary petition under Chapter 7 of title 11 of the United States Code (“**Bankruptcy Code**”) in the District of New Mexico.
2. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334.
3. Venue is proper in this Court under 28 U.S.C. § 1409.
4. This matter is a core proceeding under 28 U.S.C. § 157(b).
5. The statutory bases for this Motion are 11 U.S.C. §§ 105(a) and Rule 9006 of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

6. In March 2020, Movants’ counsel, GAFFNEY LAW, PC (the “**Firm**”) ceased operating from its place of business and moved its operations to the residence of Joel Alan Gaffney, Esq. (“**Gaffney**”), its owner and sole employee, in response to the New Mexico Department of Health’s recommendations that nonessential businesses cease operations in light of the global coronavirus pandemic.
7. In the intervening time, the Firm has kept its business activities at a minimal level while attempting to maintain client contact and legal work at acceptable levels despite the logistical hurdles imposed by the disruption caused by the coronavirus epidemic.
8. The relocation of the Firm and the disruption of the pandemic have resulted in the Firm’s failure to respond to certain matters in this case in a timely manner, including contacts with clients, discovery responses, and responses to opposing counsel. These errors are the result of failures within the Firm and of Gaffney personally, and not of the Movants, who have acted in

good faith in their efforts to continue this litigation despite the disruptions caused by the global pandemic.

9. According to the Certificates of Service filed by Defendants on June 12, 2020, Defendants served on Plaintiffs (via the Firm) Requests for Production, Requests for Admission, and Written Interrogatories on June 8, 2020 (the “**Defendants’ First Discovery Requests**”). The deadline to respond to the Defendants’ First Discovery Requests according to the Federal Rules of Bankruptcy Procedure was July 8, 2020.

10. The Court’s Order Resulting from Scheduling Conference set the deadline to complete discovery in this adversary proceeding at October 30, 2020.

11. To date, no depositions of any persons have been conducted in this adversary proceeding by any party.

12. On October 30, 2020, Defendants filed a Motion for Summary Judgment (the “**Summary Judgment Motion**”). The deadline to respond to this motion according to local rules is November 20, 2020.

13. There is a final pretrial conference scheduled later today.

14. Gaffney believes that although the global coronavirus pandemic is ongoing and, in fact, cases in New Mexico and Missouri (where Defendants are located) are on the rise, the Firm’s business operations are now at a level of stability that would permit the Firm to competently complete its representation of Movants if the Court grants some additional time.

BASIS FOR RELIEF

15. Rule 9006 of the Federal Rules of Bankruptcy Procedure provides, in relevant part: “when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time

in its discretion . . . on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.”

16. Movants respectfully submit that the global coronavirus pandemic, combined with the Firm’s disrupted business activities and Gaffney’s failures to timely communicate with them and with opposing counsel, constitute excusable neglect that would warrant extending the various deadlines in this adversary proceeding by up to ninety days to allow the parties to conduct meaningful discovery, including depositions, and to allow Movants, if they so choose, to locate and retain counsel to replace the Firm as their representative in this litigation.

WHEREFORE, the Movants respectfully request that this Court:

- A) Extend the deadline to conclude discovery in this adversary proceeding to February 1, 2021;
- B) Extend the deadline for Plaintiffs to respond to Defendants’ First Discovery Request to November 30, 2020;
- C) Extend the deadline for Plaintiffs to respond to the Summary Judgment Motion to December 15, 2020; and
- D) Adjourn and reschedule the Final Pretrial Conference to a date in late February 2021, subject to the Court’s and the parties’ availability.

Respectfully submitted,

GAFFNEY LAW, PC

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